

position on the issues of validity and unenforceability in the initial determination (ID) issued by the presiding administrative law judge (ALJ) on February 1, 1995, in the above-captioned investigation in accordance with *Beloit Corporation v. Valmet Oy, TVW Paper Machines, Inc. and the United States International Trade Commission*, 742 F.2d 1421 (Fed. Cir. 1984). The Commission has also vacated as moot ALJ Order No. 52. Finally, the Commission has determined to grant a joint motion to terminate certain respondents on the basis of a settlement agreement, and to deny a motion to intervene in the investigation.

FOR FURTHER INFORMATION CONTACT: Cynthia P. Johnson, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-205-3098.

SUPPLEMENTARY INFORMATION: On February 1, 1993, Tanabe Seiyaku Co., Ltd. (Tanabe) and Marion Merrell Dow, Inc. (MMD) (collectively "complainants") filed a complaint under section 337 alleging unfair acts in the importation and sale of diltiazem hydrochloride and diltiazem preparations ("diltiazem") by nine proposed respondents: (1) Abic Ltd. of Netanya, Israel ("Abic"); (2) Gyma Laboratories of America, Inc. of Garden City, New York ("Gyma"); (3) Profarmaco Nobel SRL of Milan, Italy; (4) Mylan Pharmaceuticals, Inc. of Morgantown, West Virginia; (5) Mylan Laboratories, Inc. of Pittsburgh, Pennsylvania (collectively referred to as the "Profarmaco respondents"); (6) Orion Corporation Fermion of Espoo, Finland; (7) Interchem Corporation of Paramus, New Jersey; (8) Copley Pharmaceuticals, Inc. of Canton, Massachusetts; and (9) Rhone-Poulenc Rorer, Inc. of Collegeville, Pennsylvania (collectively referred to as the "Fermion respondents"). Complainants alleged infringement of claim 1 of U.S. Letters Patent 4,438,035 ("the '035 patent"). On March 25, 1993, the Commission voted to institute an investigation of the complaint of Tanabe and MMD. 58 FR 16846 (March 31, 1993).

On May 6, 1993, complainants moved to amend the complaint and notice of investigation to add Plantex U.S.A., Inc. as a respondent. On May 20, 1993, the ALJ issued an ID amending the complaint and notice of investigation to add Plantex as a respondent. Plantex participated in the investigation with respondent Abic, Inc.

On February 1, 1995, the presiding ALJ issued his final ID finding that there was no violation of section 337. He found that claim 1 of the '035 patent

was not infringed by any of respondents' processes, that claim 1 was invalid as obvious under 35 U.S.C. 103, and that the '035 patent was unenforceable because of complainants' inequitable conduct during reexamination proceedings before the U.S. Patent and Trademark Office. In a separate order (Order No. 52), issued on the same date, the ALJ granted respondents' motion for evidentiary sanctions against complainants.

On March 30, 1995, the Commission determined to review the following issues in the ID: (1) Claim interpretation; (2) whether claim 1 of the '035 patent is infringed by respondents' processes; (3) whether claim 1 of the '035 patent is invalid as obvious under 35 U.S.C. 103; (4) whether the '035 patent is unenforceable; and (5) Order No. 52. Order No. 52 was considered to be part of the ID. The Commission posed several specific questions for the parties. The Commission also requested information on the status of the Abic respondents.

On April 13, 1995, complainants and Abic Ltd. and Plantex U.S.A. ("the Abic respondents") filed a joint motion to terminate the investigation as to the Abic respondents on the basis of a settlement agreement. Additionally, on April 13, 1995, Mr. James Gambrell filed a motion to intervene in the investigation.

This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and Commission interim rule 210.56 (19 CFR 210.56).

Copies of the Commission's Order, the Commission Opinion in support thereof, the nonconfidential version of the ID, and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street S.W., Washington, D.C. 20436, telephone 202-205-2000. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-205-1810.

Issued: June 1, 1995.

By order of the Commission.

Donna R. Koehnke,
Secretary.

[FR Doc. 95-13902 Filed 6-6-95; 8:45 am]

BILLING CODE 7020-02-P

INTERSTATE COMMERCE COMMISSION

[No. 41573¹]

Anacomp, Inc.; Crest Manufacturing Incorporated; Godfrey Marine; Harrison International Incorporated; Health and Personal Care Distribution Conference, Inc.; National Small Shipments Traffic Conference, Inc.; and Truckpro Parts & Service, Inc.—Petition for Declaratory Order—Certain Rates and Practices of Churchill Truck Lines, Inc. (Trans-Allied Audit Company, Inc.)

AGENCY: Interstate Commerce Commission.

ACTION: Institution of declaratory order proceeding.

SUMMARY: The Commission is instituting a proceeding under 49 U.S.C. 10321 and 5 U.S.C. 554(e) to determine whether the collection of undercharges by or on behalf of Churchill Truck Lines, Inc. (Churchill) or Trans-Allied Audit Company, Inc. (Trans-Allied), based on recharacterization of the service provided by Churchill as regular route instead of irregular route, constitutes an unreasonable practice under 49 U.S.C. 10701(a).

DATES: Comments by or on behalf of Churchill or Trans-Allied and any person desiring to submit comments in support of their position are due June 27, 1995. Petitioners' replies and any comments from all other interested persons are due July 7, 1995.

ADDRESSES: The original and 10 copies of comments and replies, which should refer to No. 41573, must be sent to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, 1201 Constitution Avenue, N.W., Washington, DC 20423. One copy of comments by or on behalf of Churchill or Trans-Allied must be served simultaneously on petitioners' representatives: Richard H. Streeter, 1401 Eye Street, N.W., Suite 500, Washington, DC 20005; and Daniel J. Sweeney, 1750 Pennsylvania Ave., NW., Washington, DC 20006.

¹ This notice embraces docket Nos. 41561, 41567, 41574, and 41575, which involve separately filed petitions seeking declaratory relief from undercharges sought by Churchill Truck Lines, Inc., so that the parties in those proceedings may be served with a copy of this notice. Those proceedings are not consolidated with this one, but parties to those proceedings may request that their proceedings be held in abeyance pending resolution of this proceeding. In No. 41561, a procedural schedule was established by decision served April 18, 1995; in No. 41567, a procedural schedule was established by decision served April 28, 1995; and in Nos. 41574 and 41575, procedural schedules will be established unless the parties request otherwise.

FOR FURTHER INFORMATION CONTACT:

Marty Schwimmer, (202) 927-6289.
[TDD for the hearing impaired: (202) 927-5721.]

SUPPLEMENTARY INFORMATION: On May 11, 1995, Anacomp, Inc.; Crest Manufacturing Incorporated; Godfrey Marine; Harrison International Incorporated; Health and Personal Care Distribution Conference, Inc.; National Small Shipments Traffic Conference, Inc.; and Truckpro Parts & Service, Inc. (petitioners) jointly filed a petition for declaratory order pursuant to the provisions of 5 U.S.C. 554(e). Petitioners request that the Commission take expedited or emergency action in order to bring an immediate halt to what they characterize as an aggressive undercharge campaign being waged by Trans-Allied on behalf of Churchill against the petitioners and hundreds of other shippers.

For many years, Churchill maintained discount tariffs applicable to services provided to points for which it held irregular route authority. Petitioners state that prior to ceasing operations in early 1994, Churchill filed tariffs with this Commission [ICC CHTL 681, ICC CHTL 604 and ICC CHTL 627 series] that included a note providing that “* * * the discounts named herein apply only to and from irregular route points actually served direct by CHTL.”

Beginning in January 1995, petitioners, who had previously used Churchill's services, began receiving dunning letters from Trans-Allied accompanied by “balance due freight bills.” Subsequently, further letters were received from Trans-Allied claiming that the discounts provided to shippers by Churchill's Tariff ICC CHTL 682 contain an unambiguous provision that restricted their application to shipments moving to and/or from irregular route service points only; that legal effect must be given to every provision of a tariff; that the movements covered by the balance due bills were less-than-truckload shipments moving to points specified in Churchill's regular route certificate and to which Churchill provided a regular less-than-truckload service; that under the filed rate doctrine reaffirmed in *Maislin Indus. v. Primary Steel*, 497 U.S. 116 (1990), Churchill must seek payment of the undiscounted rates on shipments to regular route shipping points; and that shippers are not entitled to discounts off the applicable class rates.

The facts as presented by petitioners suggest that the services involved could have been performed under either Churchill's regular route or its irregular route authority. Petitioners point out

that, during its many years of service, Churchill never contended that the discounts did not apply to shipments moving to and from all points for which it held irregular route authority, regardless of whether or not they also happen to be points for which it held regular route authority. Only after Churchill ceased operations did its auditor assert that the published discounts were not applicable to shipments moving to irregular route points that were also named in Churchill's regular route certificates.

Petitioners contend that Trans-Allied's theory of recovery is fatally flawed. They claim, that, under the Supreme Court's decision in *Hewitt-Robins, Incorporated v. Eastern Freight-Ways*, 371 U.S. 84 (1962), if two routes are available (in that case, one interstate and the other intrastate), the carrier is legally obligated to use the lower-rated route. The Court, according to petitioners, specifically condemned the use of principles of misrouting to collect a higher tariff charge as being an unlawful practice under the Interstate Commerce Act and the common law. Petitioners argue that Churchill's shippers are entitled to the lowest published tariff rate between two points.

Citing *Hewitt-Robins, Inc. v. Eastern Freight-Ways*, 302 I.C.C. 173, 174 (1957), petitioners conclude that “when no routing instructions are given, a motor carrier has a duty to select the least expensive route, unless it is an unreasonable one.” 302 I.C.C. at 174. See also *Great Atlantic & Pacific Tea Co. v. Ontario Frt. Lines*, 46 M.C.C. 237, 239, 242-243 (1946); *Mentzner Stove Repairs Co. v. Ranft*, 47 M.C.C. 151, 154 (1947); *Murray Co. of Texas, Inc. v. Marron, Inc.*, 54 M.C.C. 442, 444 (1952). They urge that the application of the *Hewitt-Robins* principles to the Churchill situation leaves no room for Trans-Allied to argue that Churchill is entitled to a non-discounted rate because, if it handled shipments in regular route service, rather than its irregular route service, it did so without consulting the shipper. Petitioners, therefore, ask the Commission to declare that Churchill had an affirmative duty to route its shippers' movements in irregular route service in order to take advantage of its published tariff discounts, and that, if it routed them in non-discounted regular route service, Churchill engaged in an unreasonable practice.

Petitioners also argue that Trans-Allied's position is not supported by the literal wording of the tariff note cited above. They contend that Trans-Allied's rationale must be rejected because it erroneously reads into the note the

nonexistent words “in irregular route service.” They emphasize that there is no such qualification within the four corners of Churchill's tariff rule and that, as numerous courts have reasoned, tariff construction requires that “the four corners of the instrument must be visualized and all the pertinent provisions considered together, giving effect so far as possible to every word, clause, and sentence therein contained.” *United States v. Missouri-Kansas-Texas R. Co.*, 194 F.2d 777, 778 (5th Cir. 1952).

Petitioners contend that the shipper is entitled to the benefit of the doubt if the tariff is ambiguous, and that, because there are no such qualifying words to alert the potential shipper to the possibility that it would be forced to pay higher rates for shipments handled pursuant to Churchill's regular route certificates, rather than its irregular route certificate, Trans-Allied's construction must be rejected. “[A]ny ambiguity or reasonable doubt as to their meaning must be resolved against the carriers.” *Id.* at 778. Citing *Carrier Service, Inc. v. Boise Cascade Corp.*, 795 F.2d 640, 642 (8th Cir. 1986), petitioners argue that, to the extent that Churchill's tariffs “would lend themselves to misinterpretation by the ordinary users of such tariffs,” they must be construed in favor of the shippers.

Finally, petitioners submit copies of correspondence to shippers in which Churchill's representatives adopted an interpretation consistent with petitioners' position that the published discount “applies only on shipments either originating at or destined to all of Churchill's direct interstate points.” Petitioners argue that such representations clearly indicate that Churchill intended that shippers would receive the discount, and that without such competitive rates these shipments would have been shipped via other carriers.

Because it appears that a controversy exists within the meaning of 5 U.S.C. 554(e), the petition will be granted and a declaratory order proceeding instituted. Churchill and Trans-Allied will be directed to file comments on the issues presented, and the petitioners will be directed to file reply comments. All other interested persons may also file comments. The parties are specifically directed to address whether the collection of undercharges by or on behalf of Churchill Truck Lines, Inc. or Trans-Allied Audit Company, Inc., based on recharacterization of the service provided by Churchill, as regular route instead of irregular route, constitutes an unreasonable practice under 49 U.S.C. 10701(a).

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. A declaratory order proceeding is instituted to consider the issues raised in this proceeding.

2. Comments by or on behalf of Churchill or Trans-Allied are due June 27, 1995.

3. Petitioners' replies and any comments from all other interested persons are due July 7, 1995.

4. A copy of this notice will be served on the parties in Nos. 41561, 41567, 41574, and 41575.

Decided: May 25, 1995.

By the Commission, Chairman Morgan, Vice Chairman Owen, and Commissioners Simmons and McDonald.

Vernon A. Williams,
Secretary.

[FR Doc. 95-13934 Filed 6-6-95; 8:45 am]
BILLING CODE 7035-01-P

[Docket No. AB-402 (Sub-No. 3X)]

**Fox Valley & Western Ltd.—
Abandonment Exemption—in Portage
and Waupaca Counties, WI; Exemption
and Notice of Interim Trail Use or
Abandonment**

AGENCY: Interstate Commerce
Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission, under 49 U.S.C. 10505, exempts from the prior approval requirements of 49 U.S.C. 10903-10904 the abandonment by Fox Valley & Western Ltd. of an 18.5-mile rail line extending between milepost 61.0 in Scandinavia and milepost 79.5 in Plover, in Portage and Waupaca Counties, WI, subject to standard labor protective conditions, environmental conditions, and, between mileposts 61.0 and 78.6, a trail use condition.

DATES: Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on July 7, 1995. Formal expressions of intent to file an offer¹ of financial assistance under 49 CFR 1152.27(c)(2) must be filed by June 19, 1995; petitions to stay must be filed by June 22, 1995; requests for a public use condition must be filed by June 27, 1995; and petitions to reopen must be filed by July 3, 1995.

ADDRESSES: Send pleadings referring to Docket No. AB-402 (Sub-No. 3X) to: (1) Office of the Secretary, Case Control

Branch, Interstate Commerce Commission, 1201 Constitution Avenue, NW., Washington, DC 20423, and (2) Janet H. Gilbert, P. O. Box 5062, Rosemont, IL 60017-5062.

FOR FURTHER INFORMATION CONTACT:

Joseph H. Dettmar, (202) 927-5660.
[TDD for the hearing impaired: (202) 927-5721.]

SUPPLEMENTARY INFORMATION:

Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Interstate Commerce Commission Building, 1201 Constitution Avenue, NW., Room 2229, Washington, DC 20423. Telephone: (202) 289-4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 927-5271.]

Decided: May 24, 1995.

By the Commission, Chairman Morgan, Vice Chairman Owen, and Commissioners Simmons and McDonald.

Vernon A. Williams,
Secretary.

[FR Doc. 95-13933 Filed 6-6-95; 8:45 am]
BILLING CODE 7035-01-P

[Finance Docket No. 32696]

**Northern Ohio & Western Railway,
L.L.C.—Operation Exemption—Line of
Sandusky County-Seneca County-City
of Tiffin Port Authority**

Northern Ohio & Western Railway, L.L.C. (NOWRR), a noncarrier, has filed a notice of exemption to operate over 25.5 miles of rail line presently owned by Sandusky County-Seneca County-City of Tiffin Port Authority (Port of Tiffin), from milepost 41.5 near Tiffin, Seneca County, OH to milepost 67.0 near Woodville Township, Sandusky County, OH.¹ NOWRR's operation of the line was expected to be consummated on May 16, 1995, and will result in NOWRR becoming a class III carrier.

Any comments must be filed with the Commission and served on: Louis E. Gitomer, Ball, Janik & Novack, Suite 1035, 1101 Pennsylvania Ave., N.W., Washington, DC 20004.

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

¹ The Port of Tiffin acquired the line segment from Consolidated Rail Corporation through a feeder line application in *Sandusky County, et al.—Feeder Line Appl.—Conrail*, 6 I.C.C.2d 568 (1990).

Decided: May 31, 1995.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,
Secretary.

[FR Doc. 95-13947 Filed 6-6-95; 8:45 am]
BILLING CODE 7035-01-P

[Finance Docket No. 32701]

**Portage Private Industry Council, Inc.,
and Akron Barberton Cluster Railway
Company—Acquisition and Operation
Exemption—Consolidated Rail
Corporation**

Portage Private Industry Council, Inc. (PPIC), a noncarrier "non-profit coalition of business and professional leaders engaged in economic development activities in Portage County, Ohio," and Akron Barberton Cluster Railway Company (ABCR), a class III rail carrier, have jointly filed a verified notice under 49 CFR Part 1150, Subpart D—*Exempt Transactions* for PPIC to acquire from Consolidated Rail Corporation and for ABCR to operate a 7.23-mile rail line between milepost 182.82±, at Ravenna, and milepost 190.05±, at Kent, in Portage County, OH. The transaction was to have been consummated on or about May 15, 1995.

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to reopen the proceeding to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to reopen will not stay the exemption's effectiveness. An original and 10 copies of all pleadings, referring to Finance Docket No. 32701, must be filed with the Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423. In addition, a copy of each pleading must be served on Norman L. Christley, 215 West Garfield Road, Suite 230, Aurora, OH 44202, and Terence M. Hynes, Sidley & Austin, 1722 Eye Street, N.W., Washington, DC 20006.

Decided: May 30, 1995.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,
Secretary.

[FR Doc. 95-13948 Filed 6-6-95; 8:45 am]
BILLING CODE 7035-01-P

DEPARTMENT OF JUSTICE

Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals

¹ See *Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).